

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on March 18, 2003 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Jim Keane, Vice Chairman (D)  
Rep. Donald Steinbeisser, Vice Chairman (R)  
Rep. Bob Bergren (D)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Ray Hawk (R)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Gary Matthews (D)  
Rep. Scott Mendenhall (R)  
Rep. Penny Morgan (R)  
Rep. Allen Rome (R)  
Rep. Sandy Weiss (D)

**Members Excused:** Rep. Bill Wilson (D)

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Alberta Strachan, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: SB 230 (3/13/03); SB 231 (3/13/03);  
SB 235 (3/13/03); SB 241 (3/13/03);  
SB 363 (3/13/03)

Executive Action: SB 231 Be Concurred In As Amended; SB  
241 Be Concurred In; SB 341 Be Concurred  
In; SB 230 Be Concurred In As Amended

**HEARING ON SB 363**

**Sponsor:** SEN. WALTER L. McNUTT, SD 50, Sidney

**Opening Statement by Sponsor:**

SEN. McNUTT said this bill limits awards of punitive damages in civil cases.

***{Tape: 1; Side: A; Approx. Time Counter: 40 - 101}***

**Proponents' Testimony:**

**Steve Turkiewicz, Executive Director, Montana Auto Dealers Association,** said this bill concerns the cost of litigation. The availability of unlimited punitive damages affects 95% to 98% of cases settled out of court prior to trial. It is obvious and undisputable that punitive damage claims increase the magnitude of the ultimate settlement and affects the entire settlement process, increasing the probability of litigation.

***{Tape: 1; Side: A; Approx. Time Counter: 101 - 155}***

**Mark Taylor, Montana Hospital Association,** said this bill puts a cap on punitive damages but it does not prevent an injured person from collecting for damages.

***{Tape: 1; Side: A; Approx. Time Counter: 155 - 210}***

**Ken Crippen, General Counsel, Watkins & Shepard Trucking,** presented written testimony.

**EXHIBIT (buh57a01)**

***{Tape: 1; Side: A; Approx. Time Counter: 210 - 248}***

**Brian Smith, Vice President and General Counsel, Truckers Express and Vice President, Montana Motor Carriers Association,** said the trucking industry is the target defendant in every sense. This bill caps punitive damages.

***{Tape: 1; Side: A; Approx. Time Counter: 248 - 279}***

**Spook Stang, Executive Vice President, Montana Motor Carriers Association,** provided written testimony.

**EXHIBIT (buh57a02)**

***{Tape: 1; Side: A; Approx. Time Counter: 279 - 340}***

**Webb Brown, Montana Chamber of Commerce**, said he supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 340 - 357}**

**Brad Griffen, Montana Retail Association**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 357 - 359}**

**Charles Brooks, Montana Chamber of Commerce**, said he supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 359 - 378}**

**Riley Johnson, NFIB**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 378 - 389}**

**Pat Melby, Montana Medical Association**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 389 - 392}**

**Carl Schweitzer, Bozeman Chamber of Commerce, Kalispell Chamber of Commerce and American Subcontractors Association of Montana**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 392 - 399}**

**Bill Leary, Montana Bankers Association**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 399 - 407}**

**Don Allen, Western Trade Association**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 407 - 434}**

**Tom McGree, Butte resident**, said they supported this bill.

**{Tape: 1; Side: A; Approx. Time Counter: 434 - 439}**

**Opponents' Testimony:**

**Larry Anderson, Attorney at Law, Great Falls**, said the fear of a punitive damage award is raising settlements in law suits. This fear is based upon the unjustified filing of punitive damage claims.

**{Tape: 1; Side: A; Approx. Time Counter: 439 - Tape: 1; Side: B; Approx. Time Counter: 123}**

**Al Smith, Montana Trial Lawyers Association**, provided written testimony on Premium Deceit; The Failure of "Tort Reform" to Cut Insurance Prices; Montana's Punitive Code - Proof; Fact Sheet; McDonald's Scalding Coffee Case; testimony from Peter Michael

Meloy, Attorney at Law, Helena; Punitive Damages in Montana;  
Punitive Damages in Montana (part 2).

**EXHIBIT** (buh57a03)

**EXHIBIT** (buh57a04)

**EXHIBIT** (buh57a05)

**EXHIBIT** (buh57a06)

**EXHIBIT** (buh57a07)

*{Tape: 1; Side: B; Approx. Time Counter: 123 - 230}*

Informational Testimony: None

Questions from Committee Members and Responses:

**REP. BERGREN** asked **SEN. McNUTT** if there were any states that had adopted this legislation. **REP. McNUTT** said there are 32 other states that have adopted this legislation.

*{Tape: 1; Side: B; Approx. Time Counter: 230 - 241}*

**REP. BOOKOUT-REINICKE** asked **Mr. Crippen** for an example of a punitive damage case. **Mr. Crippen** referred to the examples illustrated by **Mr. Smith**.

*{Tape: 1; Side: B; Approx. Time Counter: 241 - 288}*

**REP. MORGAN** asked **Mr. Anderson** if Montana had many cases regarding punitive damage. **Mr. Anderson** said there were only a few cases.

*{Tape: 1; Side: B; Approx. Time Counter: 288 - 349}*

**REP. STEINBEISSER** asked **Ms. Jamison** if punitive damages could be capped. **Ms. Jamison** said, with this legislation, they could be capped.

*{Tape: 1; Side: B; Approx. Time Counter: 349 - 401}*

**REP. FRITZ** asked **Mr. Smith** why there was not representation from the insurance agents. **Mr. Smith** said insurance companies do not generally insure general liability policies or punitive damage cases.

*{Tape: 1; Side: B; Approx. Time Counter: 401 - 427}*

**REP. MATTHEWS** asked **Mr. Smith** who sanctioned attorneys. **Mr. Smith** said if an attorney files a pleading with the court, the attorney does not have a good faith belief in backing for the facts and the law behind it.

*{Tape: 1; Side: B; Approx. Time Counter: 427 - 464}*

**REP. KEANE** asked **SEN. McNUTT** how the 3% of net worth would be determined. **SEN. McNUTT** said it would be an accounting

calculation taken off of the business' assets.

**{Tape: 1; Side: B; Approx. Time Counter: 464 - 495}**

**REP. GALLIK** asked Mr. Turkiewicz to clarify the example he had provided in his testimony. **Mr. Smith** said the defendant had spent over \$200,000 in the case in which the court findings were in their favor. It was awaiting appeal. There is a threat of punitive damages in the process for the case to go to trial rather than to settle [the case out of court].

**{Tape: 1; Side: B; Approx. Time Counter: 495 - Tape: 2; Side A; Approx. Time Counter 117}**

**CHAIRMAN MCKENNEY** asked Mr. Smith about the truckers he had alluded to as being a "target defendant." **Mr. Brian Smith** said in the business of litigation, there are certain defendants that are more apt to be named in lawsuits. Because of the type of business they run they are more apt to be found against in a lawsuit given the same amount of facts.

**{Tape: 2; Side: A; Approx. Time Counter: 117 - 166}**

**Closing by Sponsor:**

The Sponsor closed and indicated **REP. Brueggman** will carry the bill on the House Floor.

**{Tape: 2; Side: A; Approx. Time Counter: 166 - 197}**

**HEARING ON SB 235**

**Sponsor:** **SEN. JOHN BOHLINGER, SD 7, Billings**

**Opening Statement by Sponsor:**

**SEN. BOHLINGER** said this bill clarified that the Board of Athletics does not have jurisdiction over a nonprofessional or semiprofessional boxing or wrestling match or an exhibition conducted by a university, college, or high school. Also, the military or an amateur association or organization or individual conducting exhibitions or matches is not under the jurisdiction of the Board. This also holds true for "So you think you are tough" boxing matches, club boxing matches, and mud wrestling.

**SEN. BOHLINGER** also told of his career as a boxer.

**{Tape: 2; Side: A; Approx. Time Counter: 220 - 382}**

**Proponents' Testimony:**

**Bob Le Coure, President, Club Boxing, Butte**, said one of the main issues is the safety of the participants. He then told about an

incident involving Nate Riley, a boxing participant, who was injured in a boxing match and there wasn't a doctor present to administer to his injuries. There was a paramedic present who administered to him.

**{Tape: 2; Side: A; Approx. Time Counter: 382 - 500}**

**Mike Barrett, Helena resident,** provided testimony.

**EXHIBIT (buh57a08)**

**{Tape: 2; Side: B; Approx. Time Counter: 1 - 41}**

**Opponents' Testimony:**

**SEN. CAROLYN SQUIRES, SD 34, Missoula,** said boxing should not be eliminated under the rules and regulations of the Board of Athletics. The Board of Athletics has three people who cannot always attend these activities. This is a business and there is a cost for doing business. It has been indicated that this is amateur boxing and the money participants receive is training money and this is incorrect. She also supplied two newspaper articles regarding boxers.

**EXHIBIT (buh57a09)**

**{Tape: 2; Side: B; Approx. Time Counter: 41 - 119}**

**Ty Mahana, Chief of Officials,** said he was a teacher for referees. He provided organizational rules provided by the Department of Labor & Industry, Board of Athletics. He also provided various newspaper articles on boxing.

**EXHIBIT (buh57a10)**

**EXHIBIT (buh57a11)**

**{Tape: 2; Side: B; Approx. Time Counter: 119 - 168}**

**Chris Harrison, USA Boxing,** said he was an EMT and responded to the accident in Missoula involving a boxer.

**{Tape: 2; Side: B; Approx. Time Counter: 168 - 206}**

**Jason Matovich, University of Montana student, Missoula,** said he was the coach at the University of Montana for boxing team. He provided legislative information regarding various states and their boxing requirements.

**EXHIBIT (buh57a12)**

**{Tape: 2; Side: B; Approx. Time Counter: 206 - 266}**

**Jim Harrison, USA Boxing,** said without a governing body in the State more problems await participants. The safety of the fighters must be paramount against the spectators and profit of promoters. Unregulated fighting is not the solution.

**{Tape: 2; Side: B; Approx. Time Counter: 266 - 345}**

**Cheryl Walrod, Hamilton resident,** said she opposed this bill.

**{Tape: 2; Side: B; Approx. Time Counter: 345 - 351}**

**Dean Walrod, Hamilton resident,** said he opposed this bill.

**{Tape: 2; Side: B; Approx. Time Counter: 351 - 356}**

**Timothy Zahn, Club Boxing,** said he opposed this bill.

**{Tape: 2; Side: B; Approx. Time Counter: 356 - 360}**

**Mary Caferro, Helena resident,** said she opposed the bill.

**{Tape: 2; Side: B; Approx. Time Counter: 360 - 366}**

**Informational Testimony:**

**Jim Brown, Division Administrator, Business Standards Division, Department of Labor & Industry,** said he would be available to answer questions. He also provided some proposed amendments.

**EXHIBIT (buh57a13)**

**{Tape: 2; Side: B; Approx. Time Counter: 366 - 463}**

**Questions from Committee Members and Responses:**

**REP. MATTHEWS** asked Mr. Langley if there was insurance provided for participants. **Mr. Langley** stated there was only insurance through the Board of Athletics.

**{Tape: 2; Side: B; Approx. Time Counter: 463 - 512}**

**CHAIRMAN MCKENNEY** questioned the deregulation of boxing and if there should be any amendments. **SEN. BOHLINGER** indicated that he would not object to amendments.

**{Tape: 3; Side: A; Approx. Time Counter: 1 - 60}**

**REP. MENDENHALL** asked Mr. Mahana about the circumstances of the injury in Missoula and if there had been a trained official there. **Mr. Mahana** said if there was a trained official there or someone who might have noticed the participant was taking too many punches this accident may have been avoided. Perhaps he would not have taken the beating he endured if the fight would have been stopped sooner.

**{Tape: 3; Side: A; Approx. Time Counter: 60 - 82}**

**Closing by Sponsor:**

The sponsor closed.

**{Tape: 3; Side: A; Approx. Time Counter: 82 - 129}**

**HEARING ON SB 241**

**Sponsor:** SEN. DEBBIE SHEA, SD 18, Butte

**Opening Statement by Sponsor:**

**SEN. SHEA** said this bill is an order to provide that the right of a designated family member to succeed in the ownership or operation of a new motor vehicle dealership including personal water craft, snowmobile, and off-highway vehicles. It also states that a manufacturer's right of first refusal and a dealer's rights with respect to the sale, transfer, or exchange of a dealership apply to personal water craft, snowmobile and off-highway vehicles. She also provided a copy of the statute regarding these matters.

**EXHIBIT (buh57a14)**

***{Tape: 3; Side: A; Approx. Time Counter: 140 - 170}***

**Proponents' Testimony:**

**Gordy Vance, MPPA, Bozeman**, said he supported this bill.

***{Tape: 3; Side: A; Approx. Time Counter: 170 - 185}***

**Mona Jamison, General Motor's**, said they supported the bill.

***{Tape: 3; Side: A; Approx. Time Counter: 185 - 204}***

**Steve Turkiewicz, Montana Auto Dealers Association**, said the supported this bill.

***{Tape: 3; Side: A; Approx. Time Counter: 204 - 214}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

The sponsor closed and she indicated **REP. KEANE** would be carrying the bill on the House Floor.

**EXECUTIVE ACTION ON SB 241**

***{Tape: 3; Side: A; Approx. Time Counter: 214 - 265}***

**Motion/Vote:** **REP. MORGAN** moved that SB 241 BE CONCURRED IN.  
**Motion carried 18-0.**



**REP. KEANE** will carry this legislation on the House Floor.

**HEARING ON SB 230 AND 231**

**Sponsor:** **SEN. BRENT R. CROMLEY, SD 9, Billings**

**Opening Statement by Sponsor:**

**SEN. CROMLEY** said SB 230 was an act adopting the Montana Prudent Investor Rule which provided standards of care and duties of trustees in making investments and managing trust assets. SB 231 replaces the Revised Uniform Principal and Income Act with the Montana Uniform Principal and Income Act. He also explained the changes in the bill.

***{Tape: 3; Side: A; Approx. Time Counter: 265 - 297}***

**Proponents' Testimony:**

**Dan McLean, State Bar of Montana**, provided written testimony on each of the bills being heard.

**EXHIBIT** (buh57a15)

**EXHIBIT** (buh57a16)

***{Tape: 3; Side: A; Approx. Time Counter: 297 - 355}***

**Chuck Willey, State Bar of Montana**, explained the changes in both bills and some proposed amendments for each bill.

**EXHIBIT** (buh57a17)

**EXHIBIT** (buh57a18)

***{Tape: 3; Side: A; Approx. Time Counter: 355 - 440}***

**Penny Doak, Montana Bankers Association**, said she supported these bills.

***{Tape: 3; Side: A; Approx. Time Counter: 440 - 495}***

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

The sponsor closed.

***{Tape: 3; Side: B; Approx. Time Counter: 1 - 13}***

EXECUTIVE ACTION ON SB 341

*{Tape: 3; Side: B; Approx. Time Counter: 13 - 500 Comments: On all executive action, REP. KEANE cast proxy votes for REP. WILSON.}*

Motion/Vote: REP. MORGAN moved that SB 341 BE CONCURRED IN.  
Motion carried 18-0.

REP. BITNEY will carry this bill on the House Floor.

EXECUTIVE ACTION ON SB 230

Motion: REP. GALVIN-HALCRO moved that SB 230 BE CONCURRED IN.

Motion: REP. MORGAN moved that SB 230 BE AMENDED. (Exhibit 17)

Discussion:

Mr. Campbell explained the amendments.

REP. MORGAN explained to REP. BOOKOUT-REINICKE the conditions of awarding a trust to a beneficiary.

Vote: Motion carried 18-0 on amendments.

Motion/Vote: REP. GALVIN-HALCRO moved that SB 230 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

REP. MORGAN to carry this bill on the House Floor.

EXECUTIVE ACTION ON SB 231

Motion: REP. BERGREN moved that SB 231 BE CONCURRED IN.

Motion: REP. KEANE moved that SB 231 BE AMENDED (Exhibit 18).

Discussion:

Mr. Campbell explained the amendments.

REP. MORGAN explained the policies regarding trust funds.

Vote: Motion carried 18-0 on the amendments.

Motion/Vote: REP. KEANE moved that SB 231 BE CONCURRED IN AS AMENDED. Motion carried 18-0.

**ADJOURNMENT**

Adjournment: 11:15 A.M.

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REP. JOE MCKENNEY, Chairman

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ALBERTA STRACHAN, Secretary

JM/AS

**EXHIBIT** (buh57aad)